

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DURRELL RICKEY MOORE,

Petitioner,

Case No. 11-11218

v.

Hon. John Corbett O'Meara

LLOYD RAPELJE,

Respondent.

**ORDER DENYING CERTIFICATE OF APPEALABILITY AND
GRANTING APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES**

Before the court are Petitioner's motion for a certificate of appealability and application to proceed on appeal without prepayment of fees, filed August 28, 2012. Finding Petitioner's financial affidavit to be sufficient proof of his inability to prepay the filing fee, the court will grant Petitioner's application to proceed on appeal without the prepayment of fees, pursuant to 28 U.S.C. § 1915(a)(1).

In his motion for a certificate of appealability, Petitioner requests that the court accept the motion as objections to the magistrate judge's report and recommendation. Petitioner did not file timely objections, despite the magistrate's instruction that objections must be filed within fourteen days and "[f]ailure to file specific objections constitutes waiver of any further right of appeal." R & R at 19. Petitioner contends that he is illiterate and relied on erroneous advice from a "jailhouse lawyer" that he did not need to file objections. Ignorance of the law, even by pro se litigants, does not generally meet the standard of "excusable neglect" required in Fed. R. Civ. P. 6(b)(1)(B) (extending time).

Even if the court were to consider Petitioner's objections, however, it would overrule them for the reasons set forth in the magistrate judge's June 19, 2012 report and recommendation. The court further concludes that Petitioner is not entitled to a certificate of appealability, for the reasons stated by the magistrate judge in his report and recommendation. See R & R at 18-19.

Therefore, IT IS HEREBY ORDERED that Petitioner's motion for a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that Petitioner's application to proceed on appeal without prepayment of fees is GRANTED.

s/John Corbett O'Meara
United States District Judge

Date: October 2, 2012

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, October 2, 2012, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager